

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ALTERRA AMERICA INSURANCE CO.,

Plaintiff,

v.

NATIONAL FOOTBALL LEAGUE, et al.,

Defendants.

Index No. 652813/2012 **E**

Hon. Andrea Masley

DISCOVER PROPERTY & CASUALTY
COMPANY, et al.,

Plaintiffs,

v.

NATIONAL FOOTBALL LEAGUE, et al.,

Defendants.

Index No. 652933/2012 **E**

Hon. Andrea Masley

THE PEOPLE OF THE STATE OF NEW YORK

TO: Buffalo Bills, LLC
One Bills Drive
Orchard Park, New York 14127

On behalf of all of the identified insurers,¹ YOU ARE HEREBY COMMANDED, under
§ 3120 of the New York Civil Practice Law and Rules, to produce documents as set forth in the

¹ The identified insurers are TIG Insurance Company, The North River Insurance Company, United States Fire Insurance Company, Discover Property & Casualty Insurance Company, St. Paul Protective Insurance Company, Travelers Casualty & Surety Company, Travelers Indemnity Company, Travelers Property Casualty Company of America, Continental Insurance Company, Continental Casualty Company, Bedivere Insurance Company, Hartford Accident & Indemnity Company, New England Reinsurance Corporation, ACE American Insurance Company, Century Indemnity Company, Indemnity Insurance Company of North America, California Union Insurance Company, Illinois Union Insurance Company, Westchester Fire Insurance Company, Federal Insurance Company, Great Northern Insurance Company, Vigilant Insurance Company, Munich Reinsurance America, Inc., XL Insurance America Inc., XL Select Insurance Company, American Guarantee and Liability Insurance Company, Arrowood Indemnity Company, and Westport Insurance Corporation.

attached Exhibit A and pursuant to the definitions and instructions set forth in the attached Exhibit B at the office of Kennedys CMK LLP, 570 Lexington Avenue, 8th Floor, New York, New York 10022 on the 19th day of March 2018, at 10 o'clock in the forenoon.

Failure to comply with this subpoena is punishable as a contempt of court and shall subject you to a penalty and damages in a civil suit.

Dated: March 5, 2018
New York, New York

KENNEDYS CMK LLPBy: 

Christopher R. Carroll, Esq.
Heather E. Simpson, Esq.
Mark F. Hamilton, Esq.
570 Lexington Avenue, 8th Floor
New York, New York 10022
(646) 625-4000
Attorneys for Defendants
TIG Insurance Company
The North River Insurance Company
United States Fire Insurance Company

And on behalf of Discover Property & Casualty Insurance Company, St. Paul Protective Insurance Company, Travelers Casualty & Surety Company, Travelers Indemnity Company, Travelers Property Casualty Company of America, Continental Insurance Company, Continental Casualty Company, Bedivere Insurance Company, Hartford Accident & Indemnity Company, New England Reinsurance Corporation, ACE American Insurance Company, Century Indemnity Company, Indemnity Insurance Company of North America, California Union Insurance Company, Illinois Union Insurance Company, Westchester Fire Insurance Company, Federal Insurance Company, Great Northern Insurance Company, Vigilant Insurance Company, Munich Reinsurance America, Inc., XL Insurance America Inc., XL Select Insurance Company, American Guarantee and Liability Insurance Company, Arrowood Indemnity Company, and Westport Insurance Corporation.

EXHIBIT A**DOCUMENT REQUESTS**

1. All Documents and Communications relating to any research or studies conducted by the Bills or the NFL related to Alleged Brain Injury, the long-term effects or risks of head trauma sustained in the play of football, and/or the potential relationship between head trauma and subsequent Alleged Brain Injury.
2. All Documents and Communications relating to Alleged Brain Injury, including but not limited to the potential long-term effects or risks of head trauma sustained in the play of football and/or the potential relationship between head trauma and subsequent Alleged Brain Injury.
3. All Documents and Communications between the Bills and the NFL relating to Alleged Brain Injury, including but not limited to the potential long-term effects or risks of head trauma sustained in the play of football and/or the potential relationship between head trauma and subsequent Alleged Brain Injury.
4. All Documents and Communications between the Bills and any other NFL team or teams relating to Alleged Brain Injury, including but not limited to the potential long-term effects or risks of head trauma sustained in the play of football and/or the potential relationship between head trauma and subsequent Alleged Brain Injury.
5. All Documents and Communications between the Bills and the MTBI Committee relating to Alleged Brain Injury, including but not limited to the potential long-term effects or risks of head trauma sustained in the play of football and/or the potential relationship between head trauma and subsequent Alleged Brain Injury.
6. All Documents and Communications between the Bills and the Head, Neck and Spine Committee relating to Alleged Brain Injury, including but not limited to the potential long-term effects or risks of head trauma sustained in the play of football and/or the potential relationship between head trauma and subsequent Alleged Brain Injury.
7. All Documents and Communications between the Bills and the Injury and Safety Panel Committee relating to Alleged Brain Injury, including but not limited to the potential long-term effects or risks of head trauma sustained in the play of football and/or the potential relationship between head trauma and subsequent Alleged Brain Injury.
8. All Documents and Communications between the Bills and any equipment manufacturers, including but not limited to, helmet manufacturers, relating to Alleged Brain Injury, including but not limited to the potential long-term effects or risks of head trauma sustained in the play of football and/or the potential relationship between head trauma and subsequent Alleged Brain Injury.

9. All Documents and Communications between the Bills and any Doctor that is or was at any time on the MTBI Committee, Head, Neck and Spine Committee, or Injury and Safety Panel relating to Alleged Brain Injury, including but not limited to the potential long-term effects or risks of head trauma sustained in the play of football and/or the potential relationship between head trauma and subsequent Alleged Brain Injury.

10. All Documents and Communications relating to Alleged Brain Injury sustained by any current or former NFL player.

11. All lists, databases, compilations, or spreadsheets maintained by the Bills containing data about current or former players of the Bills, including but not limited to name, date of birth, dates of NFL career, documented concussions, and Alleged Brain Injuries sustained, or any similar information.

12. All Documents and Communications relating to the actual or attempted collection of any data or other information regarding Alleged Brain Injury by the Bills at its own behest or at the request of the NFL, Elliot Pellman, M.D., the MTBI Committee, the Head, Neck and Spine Committee, or the Injury and Safety Panel.

13. All Documents and Communications relating to any workers compensation claim for Alleged Brain Injury filed by any current or former player of the Bills.

14. All Documents and Communications regarding potential or actual claims or lawsuits asserted by any current or former NFL players against the NFL or any NFL team relating to Alleged Brain Injury.

15. All Documents and Communications between the Bills and any other NFL team or teams regarding potential or actual claims or lawsuits asserted by any current or former NFL players against the NFL or any NFL team relating to Alleged Brain Injury.

16. All Documents and Communications between the Bills and the MTBI Committee regarding potential or actual claims or lawsuits asserted by any current or former NFL players against the NFL or any NFL team relating to Alleged Brain Injury.

17. All Documents and Communications between the Bills and the Head, Neck and Spine Committee regarding potential or actual claims or lawsuits asserted by any current or former NFL players against the NFL or any NFL team relating to Alleged Brain Injury.

18. All Documents and Communications between the Bills and the Injury and Safety Panel Committee regarding potential or actual claims or lawsuits asserted by any current or former NFL players against the NFL or any NFL team relating to Alleged Brain Injury.

19. All Documents and Communications related to the Bills' weekly injury reports regarding concussions, head trauma, or Alleged Brain Injury submitted to the NFL.

20. All Documents and Communications related to any recommendations, proposals or other input given by the Bills to the NFL regarding prevention of concussions, head trauma, and/or Alleged Brain Injury in NFL football players, protocols for testing and diagnosing NFL football players who sustained head trauma, and/or return-to-play guidelines.

21. All Documents and Communications related to any concussion management protocols utilized by the Bills.

22. All Documents and Communications related to any costs incurred by the Bills in connection with the defense of the MDL Action.

23. All Documents and Communications related to any costs incurred or to be incurred by the Bills in connection with the class action settlement entered into in the MDL Action.

24. All Documents and Communications between the Bills and the NFL regarding strategy for the defense of the MDL Action.

25. All Documents and Communications between the Bills and the NFL regarding the funding of defense and settlement costs in the MDL Action.

26. All Documents and Communications showing payment of defense and settlement costs in the MDL Action, or reimbursement of such costs to the NFL, including but not limited to copies of invoices and payment documentation.

27. All Documents and Communications seeking or memorializing the Bills' approval of the class action settlement entered into in the MDL Action.

28. All Documents and Communications relating to the corporate relationship between the Bills and the NFL.

29. All Documents and Communications related to any indemnity agreements between the Bills and the NFL, including Section 3.11(c) of the Constitution and Bylaws of the National Football League.

30. All Documents and Communications related to any indemnity agreements between the Bills and any equipment manufacturers, including but not limited to, helmet manufacturers.

31. All Documents and Communications relating to ProCap.

32. All Documents and Communications relating to the book *League of Denial*.

33. All Documents and Communications relating to the movie *Concussion*.

34. All Documents and Communications relating to the NFL concussion summit held in Chicago on June 19, 2007.

35. Copies of any general liability insurance policies issued to the Bills from 1950 through the present.

36. Any document retention and destruction policies, including those relating to document filing, document storage, and electronically-stored information, maintained by the Bills since 1950.

EXHIBIT B
DEFINITIONS

1. The term “Communication(s)” refers to any meeting, conversation, discussion, correspondence, message, letter, e-mail, voicemail, facsimile, phone call, or other occurrence whereby thoughts, questions, opinions, and/or data of any sort are transmitted from one or more persons to one or more persons.

2. The term “Document” refers to all documents including, without limitation, all electronic and tangible things and all written, printed, typed, photocopied, photographic, graphic, or recorded material of any kind or character, however produced or reproduced including but not limited to all agreements, books, calendars, charts, contracts, communications, computer databases, computer print-outs, correspondence, desk pads, diaries, drafts, drawing, entries in books of account, facsimile transmissions, files, folders, drafts, guidelines, instructions, insurance policies, lists, manuals, maps, memoranda, inter-office or intra-office communications, minutes, notes, operating and procedural pamphlets, reports, letters, emails, rules, studies, telegrams, teletypes, and all written or tangible things that can be reasonably derived from any computer database, microfilm, microfiche or other stored media.

3. The phrases “regarding,” “relate to” or “refer to” or any variations of these terms means directly or indirectly constituting, reflecting, representing, supporting, contradicting, arising in any way out of, referring to, relating in any way to, stating, describing, recording, noting, embodying, containing, mentioning, studying, analyzing, discussing, evaluating or relevant to the subject matter.

4. The term “NFL” means the National Football League, the National Football League Management Council, LLC, the NFL League Office, the Commissioner of the NFL, NFL Ventures, Inc., NFL Ventures, L.P., NFL Productions, LLC, NFL Enterprises, LLC, NFL

Properties, LLC, NFL International, LLC, and any of their predecessors and successors, as well any owned, controlled, associated, affiliated, parent or subsidiary companies or corporations, their predecessors or successors-in-interests, and present and former officers, directors, employees, agents, and all other persons acting on their behalf.

5. The term "MTBI Committee" means the NFL's Mild Traumatic Brain Injury Committee created in 1994 and includes any and all subcommittees thereunder, any successor or related committees including the Head, Neck, and Spine Committee (as defined below) and the Injury and Safety Panel (as defined below), and any and all members thereof including, but not limited to, Elliot Pellman, M.D., Ira Casson, M.D., David Viano, M.D., Mark Lovell, Ph.D., Joseph Maroon, M.D., Henry Feuer, M.D., Joel Morgenlander, M.D., and Thomas Naidich, M.D. As used in these Document Requests, the term "MTBI Committee" as defined above means the full committee and/or any subset of any members or an individual member, and shall be construed in these Document Requests to be as inclusive and broad in scope as possible.

6. The term "Head, Neck and Spine Committee" means the NFL's Head, Neck and Spine Committee and includes any and all subcommittees thereunder and any and all members thereof, past and present, including but not limited to, Hunt Batjer, M.D., Richard Ellenbogen, M.D., Mitchel Berger, M.D., Ronald Barnes, Ernest Bates, M.D., Bradley F. Boeve, M.D., T. Pepper Burruss, John A. Butman, M.D., Ph.D., Randal P. Ching, Ph.D., Ron Courson, Henry Feuer, M.D., Richard Glicklich, M.D., Kevin Guskiewicz, Ph.D., Robert Harbaugh, M.D., Andrew Hecht, M.D., Stanley Herring, M.D., Merrill Hoge, Joel Kramer, Psy.D., Geoff Ling, M.D., Ph.D., Russell Lonser, M.D., Thom Mayer, M.D., Michael McCrea, Ph.D., Bruce Miller, M.D., Frank A., Pinar, Ph.D., Margot Putukian, M.D., Raul Radovitzky, Ph.D., Daniel Resnick, M.D., Joseph Skiba, Erik E. Swartz, Ph.D., Joseph F. Waeckerle, M.D., Robert Watkins, III,

M.D., Anthony Yates, M.D., FACP, J. Christopher Zacko, M.D., M.S., Robert C. Cantu, M.A., M.D., FACS, FAANS, FACSM, Joseph Maroon, M.D., FACS, David Meaney, Ph.D., Barry Myers, M.D., Ph.D., and Gunter Siegmund, Ph.D. As used in these Document Requests, the term “Head, Neck and Spine Committee” as defined above means the full committee and/or any subset of any members or an individual member, and shall be construed in these Document Requests to be as inclusive and broad in scope as possible.

7. The term “Injury and Safety Panel” means the NFL’s Injury and Safety Panel that was founded in 1993 and includes any and all subcommittees thereunder, and any and all members, past and present thereof, including, but not limited to, Elliott Hershman, M.D., Robert Anderson, M.D., John Bergfeld, M.D., James Bradley, M.D., Lawrence Brown, M.D., Anthony Casolaro, M.D., James Collins, Michael Coughlin, M.D., Robert Johnson, M.D., John Lombardo, M.D., Vandana Menon, M.D., Ph.D., Jeff Silverstein, M.D., Joseph Skiba, Kurt Spindler, M.D., Andrew Tucker, M.D., Robert Vogel, M.D., Edward Wojtys, M.D., Anthony Yates, M.D., and John York, M.D. As used in these Document Requests, the term “Injury and Safety Panel” as defined above means the full committee and/or any subset of any members or an individual member, and shall be construed in these Document Requests to be as inclusive and broad in scope as possible.

8. The term “Doctor on the MTBI Committee, Head, Neck and Spine Committee, or Injury and Safety Panel” means those individuals specifically listed above in definitions 5-7.

9. The term “Alleged Brain Injury” means any condition, disorder or disease that actually or allegedly resulted from single or repetitive concussive or sub-concussive head trauma, including but not limited to traumatic brain injuries (mild, moderate, or severe), neurocognitive impairment, neurological injury or disease, Alzheimer’s Disease, Parkinson’s

Disease, Amyotrophic Lateral Sclerosis (ALS), Chronic Traumatic Encephalopathy (CTE), dementia, cognitive injury or disorder, memory loss, anxiety or mood disorders, depression, sleeplessness, impulse control problems, or headaches, whether or not such condition, disorder, or disease in fact does result from concussive or subconcussive head trauma. "Alleged Brain Injury" also includes those conditions, disorders, or diseases alleged by the Claimants in the MDL Action.

10. The term "Bills," "You," and "Your" means Buffalo Bills, LLC, Buffalo Bills, LLC, and any of its predecessors and successors, as well any owned, controlled, associated, affiliated, parent or subsidiary companies or corporations, their predecessors or successors-in-interests, and present and former officers, directors, employees, agents, and all other persons acting on its behalf.

11. The term "MDL Action" means the underlying action captioned, In Re National Football League Players' Concussion Injury Litigation, MDL No. 2323, venued in the United States District Court for the Eastern District of Pennsylvania before the Honorable Anita Brody, which is comprised of numerous lawsuits brought by former NFL players, alleging certain neurological injuries and conditions as a result of concussive and sub-concussive impacts sustained during their professional football careers.

INSTRUCTIONS

1. For each request contained herein, you are requested to produce all documents that are in your possession, custody or control, or in the possession, custody or control of any of your representatives.

2. Each document responsive to a request for production of documents requires a production of the document in its entirety.

3. In responding to this demand for the production of documents, you are requested to respond in writing and state as to each of the requests, either: (a) that there are such documents and that they will be produced; (b) that there are such documents, but you refuse to produce them because of a claim of privilege; or (c) that there are no such documents as are requested by our particular request.

4. If you withhold any documents or portions of documents from production on the grounds of privilege, provide a written privilege log identifying the following for each document:

- (a) author of the document;
- (b) all recipients of the document, whether shown or not shown on the face of the document;
- (c) the date of the document;
- (d) the subject matter of the document;
- (e) the grounds on which the document was withheld from production; and
- (f) where the privilege is asserted as attorney work-product, the identity of the anticipated litigation or trial upon which the assertion is based.

5. If you assert that a document request is objectionable, state the objection clearly, and specifically identify which parts of the request or the response it requires is/are objectionable and the basis for such objection. If you assert that a part of a document request is objectionable,

respond to the remaining parts to which you do not object.

6. The words “and” and “or” cannot be interpreted to exclude any information otherwise within the scope of any request.

7. The singular form of any noun or pronoun includes within its meaning the plural form of the noun or pronoun used, and vice-versa; and the use for any tense of any verb includes within its meaning all other tenses of the verb so used.

8. The requests are continuing in nature and it is requested that you serve us with supplementary responses should additional information or documents become known to you.

9. The circumstances or reasons that the documents in possession of this non-party witness are required and that notice is given is that the documents contain information that is material and necessary in the defense of this matter.

10. Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person(s) on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.